



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
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STATE OFFICE BUILDING
AUGUSTA, MAINE 04333

February 6th, 1995

Minutes of the February 6, 1995 meeting of the Commission on Governmental Ethics and Election Practices held in the parlor of St. Paul's Center, 136 State Street, Augusta, Maine.

Present: Chairman Robert P. McArthur; Members Nathan L. Grass, John D. Devine, Nelson Madore, Robert E. Tierney, Richard L. Trafton, Paul E. Violette, Peter B. Webster; Assistant Attorney General Cabanne Howard; Director Marilyn Canavan

, absent: Trish A. Riley

The minutes of the November 21, 1994 meeting were approved as written.

Under new business, the Commission considered the respective requests of lobbyists Katherine Vezina, Kenneth McLeod, Robert Howe, Doyle & Nelson, and John Delahanty for penalty waivers.

Ms. Katherine Vezina was present and represented lobbyist Joanne D'Arcangelo and Family Planning Association of Maine (FPAM). She asked that the Commission waive a \$200 penalty which was assessed Ms. D'Arcangelo and FPAM for their failure to file a timely annual report. Ms. Vezina explained that Ms. D'Arcangelo had terminated her employment in December; that she had been hired to replace Ms. D'Arcangelo effective January 13, 1995; and that the report was overlooked in the transition. Mr. Trafton moved, and Mr. Tierney seconded, to accept the staff recommendation calling for a 50 percent waiver of the penalty. The motion carried.

Mr. McLeod then rose to address the Commission concerning the late annual report of his client. American Cyanamid (AC). He claimed that he tried repeatedly to reach the Commission office on December 28th to find out whether AC had filed the report but that his calls went unanswered; and that AC had failed to FAX the report on the due date despite assurances that they would.

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Mr. Trafton moved that the Commission accept the staff recommendation calling for a 50 percent reduction of the penalty. Mr. Violette seconded and the motion carried 5-0-2, Mr. Webster and Mr. Devine abstaining.

Mr. Robert Howe, representing the firm of Weil & Howe, then addressed the Commission concerning his late monthly disclosure reports for December 1994. He explained that the firm intentionally delayed filing the reports pending receipt of an opinion from the Commission as to how the registrations should be completed and the fees to be paid. He said that the Commission staff recently advised Weil & Howe that it must remit a fee of \$200 for each joint lobbyist/employer registration and an additional \$100 fee for each lobbyist associate; that if the firm is the lobbyist designate, the \$200 fee covers only the firm, and not individual lobbyists; that that interpretation is at odds with advice rendered by the Commission the previous year 'when it said that the registration fee covers both the firm and one lobbyist. Mr. Howe concluded by saying that his firm was seeking to file an amended registration in light of the fact that the current interpretation is inconsistent with his previous understanding of the law. It was then noted that the law contains no amendatory provisions; whereupon Mr. Howard expressed the opinion that the Commission may exercise discretion in granting such permission depending on the circumstances. Mr. Trafton moved, and Mr. Violette seconded, to waive any penalties accrued by Weil & Howe for its late December disclosure reports. No vote was taken on the motion.

There followed a lengthy discussion on the question whether the law actually contemplates the remittance of an additional \$100 registration fee where the lobbyist designate is a lobbying firm. At its conclusion, Chairman McArthur directed Ms. Canavan and Mr. Howard to draft a letter to the legislature noting the Commission's observation that the law governing lobbyist registration contains certain ambiguities that make it difficult to administer.

Next, the Chair recognized lobbyist John Delahanty who rose to address the Commission concerning the late monthly disclosure report of the Paper Industry Information office. At that point, Mr. McArthur advised Mr. Delahanty that the staff had recommended a 50 percent reduction of the \$100 assessment; whereupon Mr. Delahanty declined to offer further remarks. On motion of Mr. Webster, seconded by Mr. Tierney, the partial waiver was voted.

Mr. Andrew McLean then asked permission to speak on behalf of the firm of Doyle & Nelson. Findings showed that the firm was assessed a penalty of \$600 for late submission of six client reports. Mr. McLean stated that the firm had recently replaced both a bookkeeper and secretary who together shared the responsibility for filing reports, and that the filing was overlooked in the transition. Mr. Trafton moved that the penalty be reduced to \$300, this in nonconcurrence with the staff recommendation calling for a penalty of \$200.

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Mr. Tierney seconded the motion and it was voted.

Next, the Commission considered the late pre-election reports of Local 1253 Political Action Committee (PAC) and Maine Bikers PAC. Findings showed that Local 1253 had accrued a total of \$750 in penalties, having filed three days late; and that Maine Bikers PAC had accrued \$500 in penalties for filing two days late. Mr. Jeff Rose was present on behalf of Local 1253. He asked that the Commission exercise leniency in determining the PAC's fine, explaining that the Augusta office of Local 1253 was late sending him the forms:

that he promptly completed and mailed the reports on receiving the necessary paperwork. Mr. Violette moved that a penalty of \$100 be assessed Local 1253 PAC, and that Maine Bikers PAC be penalized likewise. Mr. Trafton seconded the motion and it was voted.

The Chair then recognized Patricia Van Orman, a candidate for county commissioner. Findings showed that Ms. Van Orman filed her pre-election report one business day late. Ms. Van Orman asked that the Commission take into consideration that she had raised and spent very little money on her campaign. At that point, a question was raised as to whether the Commission has any discretion in waiving penalties relating to late pre-election reports given the language in 21-A M.S.R.A. Section 1020(2)(B) which states: "A forfeiture of \$50 must [emphasis added] be adjudged for each business day that reports . . . are late." In the ensuing discussion a further question was raised as to whether the language in 21-A MRSA Section 1020(2) grants such discretion since it authorizes the Commission "to determine whether a required report satisfies the requirements for timely filing and, if determined to be late, the number of days of lateness." Ms. Canavan noted that previous Commissions have been divided as to the meaning of Section 1020, some interpreting it as discretionary and others adhering to its literal meaning. At that point, Mr. Trafton moved, and it was seconded, to table Item 3-A: late pre-election reports. The Commission then directed Ms. Canavan to seek a legislative amendment clarifying the Commission's authority with respect to waiving penalties.

The next items considered were the pre-election reports of Maine People's Alliance PAC (MPA) and Citizens Against New Taxes PAC (CANT). Both committees filed three days late. Mr. Madore moved, and it was seconded, to waive the \$750 penalty assessed each on the basis that the PACs neither raised nor spent any money during the filing period.

Mr. Webster then moved, and Mr. Madore seconded, to accept a staff recommendation calling for the assessment of a \$10 penalty against the following party committees, each of whom had filed pre-election reports one day late: Androscoggin County Republican, Lincoln County Republican, and

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Kennebec County Democratic.

The Commission next voted to remove from the table Item #2, a draft policy governing the political activity of Commission employees. Questions were raised as to whether the policy was overly restrictive and Whether sanctions for failure to comply would include dismissal of an -employee. Whereupon Counsel Howard advised that, in deciding whether such a policy interferes with employee rights, the court would give weight to the fact that the Commission is a highly sensitive Political body; that removing its employees involved in politics might survive even a compelling state interest inquiry by the courts. After a lengthy discussion on the merits of the policy, the Commission voted 2-4-1 against adoption, Messrs. Grass and Tierney voting in the affirmative, Messrs, Trafton, Webster, Madore and Violette voting in the negative, Mr. Devine abstaining. Ms. Canavan was then directed to draft a set of nonbinding guidelines for Commission employees.

Next, the Commission ruled on the late pre-election reports of the following political action committees: Congressional Term Limits Coalition, Inc. (CTLC) which filed 2 days late; Committee for Common Sense Government (CCSG) which filed 1 day late, and Maine Osteopathic PAC (MOPAC) which filed 1 day late.

Mr. Webster moved that the Commission accept the staff recommendations calling for 1) waiver of \$450 of the \$500 penalty accrued by CTLC on the basis that the PAC raised/spent less than \$275; 2) assessment of the full penalty accrued by CCSG and MOPAC on the basis that each raised/spent more than \$1,000. The motion was seconded and voted.

The Commission then reviewed findings concerning late post-election filers. Recommendations were based, in part, on the amount raised/spent by each candidate. Mr. Trafton moved, and Mr. Webster seconded, to accept the staff recommendations with respect to the following candidates:

Name	Business days late	Penalty accrued	Penalty recommended
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Candidates

Kerry Holmes	15	\$150	0
John Marshall	8	\$90	0
Gary W. Seavey	13	\$130	0
Mark Schinzel	11	\$110	0
Patrick Larsen	9	\$90	\$45
Wanda Worrey	9	\$90	\$10
Kristin Aiello	9	\$90	\$45
Edward Bradley	19	\$190	\$95
Raymond Geary	12	\$120	\$15

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James Donnelly	12	\$120	\$110
Clayton Fowlie	7	\$70	\$70
Peter Hazlett	30*	\$300	\$300
George Lawson	30*	\$300	\$300

The Commission then turned to the post-election report of candidate Clinton Phinney which was filed seven days late. Findings showed that Mr. Phinney raised/spent \$1,256/\$2,869 during the filing period; that his pre-election report had been submitted late as well. Mr. Phinney claimed in his statement to the Commission that his treasurer had a receipt showing the report was timely filed. It was moved, seconded, and voted to forgive the penalty if the receipt is produced; to assess a penalty of \$70 otherwise.

These reports outstanding as of date of meeting.

Next, the Commission considered the staff's request for guidance as to whether the Democratic Governors Association PAC (DGAPAC), based in Washington D.C., must file a termination report under 21-A MRSA Section 1061, in light of the fact that out-of-state PAC's are not subject to PAC registration requirements. The Commission directed the staff to notify DGAPAC that it must terminate its registration in order to eliminate further filing obligations.

Next, on motion of Mr. Violette, seconded by Mr. Madore, the commission voted to assess candidate Christopher Cimino a penalty of \$300, on findings that he submitted his 48-hour report six business days late.

The Commission then reviewed staff findings that candidate Joseph Brennan had received two separate contributions from the Democratic Congressional Campaign Committee (DCCC) on August 18, 1994 amounting to \$9,100, allegedly in possible violation of 21-A M.R.S.A. Section 1015(2). Mr. Howard pointed out that the Commission rules, adopted in 1991, state that all contributions made to a candidate through the day of the primary are deemed to be made in the primary; that all contributions made after the primary election are deemed to be made in the general election; and that the rules have the force of the law. Mr. Violette moved, and it was seconded, to advise Mr. Brennan to return that portion of the money which apparently exceeds the contribution limitation; i.e., \$4,100. At that point, Ms. Canavan noted that Mr. Gerald Petruccelli, counsel for Mr. Brennan, had asked that the matter be tabled, as he was unable to attend that day. It was so moved and voted.

The next item reviewed was the request of Steven Ridlon for waiver of a \$50 penalty fee assessed in 1992 pursuant to findings that he had filed a late

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registration. Mr. Trafton moved to table the item on the basis that 21-A M.T.S.A. Section 1020 makes the penalty mandatory. Mr. Violette seconded and the motion carried.

Next, the Commission considered the appeal of candidate John Marsh from a penalty of \$100 assessed at the November 21, 1994 meeting pursuant to a finding that he violated the disclaimer law. On motion of Mr. Trafton, seconded by Mr. Madore, it was voted to waive the penalty on the basis of findings which showed the omission was the result of a printer's error.

On motion of Mr. Trafton, seconded by Mr. Madore, the Commission voted to refer the matter of candidate Elwin Martin's delinquent reports to the office of the Attorney General.

The Commission then reviewed a staff request for guidance as to whether it should continue to bring forward all occurrences of substantial nonconformance found in reports, given that the staff conducts only cursory audits and that findings are not made with any consistency. The staff also raised the question of how its members should respond when legislative employees bring pressure to bear on a matter involving a potential violation. It was the consensus of members, and the staff was so advised, that its employees should continue to bring forward findings, however random; and that staff members

should discuss pending matters with the parties involved only. A question was then raised as to whether the Commission should enlist the help of the State Auditor in examining reports since 21-A M.R.S.A. Section 100J(3) states that the State Auditor . . . shall assist the commission in making investigations and in other phases of the commission's duties . . ." Whereupon Mr. McArthur agreed to communicate with the State Auditor, to see if such assistance might be arranged.

The Commission then turned to the request of Senator Chuck Cianchette for an advisory opinion as to whether he must report expenditures made in support of his candidacy for leadership on his campaign finance report. On motion of Mr. Violette, seconded by Mr. Webster, the Commission voted to advise Mr. Cianchette that if the expenditures were made by his own election committee, they are reportable under 21-A M.R.S.A. Section 1017(5); that if the funds were solicited for the sole purpose of supporting other candidates, then distributed directly and not through his election committee, those activities would fit within the definition of a political action committee under 21-A M.R.S.A. Section 1012(5)(A)(2), and Mr. Cianchette should then have registered and reported as a political action committee; that if Mr. Cianchette used personal funds for the expenditures, the transactions would be reportable only by the recipients of the contributions, not by Mr. Cianchette.



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The next matter considered was the request of a former legislator as to whether she may contribute surplus campaign funds to another political committee. Mr. Violette moved that the Commission respond in the affirmative, pointing to 21-A M.R.S.A. Section 1017(8) which permits the use of surplus funds for such transactions. Mr. Webster seconded and it was voted.

The Commission then considered the request of Representative James Libby for an advisory opinion as to whether he would have a conflict of interest in serving on the Board of Directors of the Jobs for Maine's Graduate Program (JMGP). Findings showed that JMGP is a non-profit 501-3C corporation that works with businesses to secure placement for high school students; that the director's function as an advisory board for the President of JMGP; that JMGP receives both state and federal funding amounting to \$1.8 annually; and that board members receive neither travel expenses nor pay them except on rare occasions when the board pays lodging and expenses for members to attend a conference. On those facts, members concluded that Representative Libby did not stand to benefit financially from serving on the board and thus there would be no conflict; and on motion of Mr. Webster, Mr. Madore seconding, the Commission voted to direct the staff to so advise Representative Libby. The motion carried,

Next, the Commission considered the requests for penalty waivers of lobbyists John Lisnik (for the University of Maine), Susan Sargent (for the Sierra Club), Robert Stickney (for Boise Cascade), and Al Smith (for common cause). Findings showed that each had filed late annual reports. Ms. Canavan pointed out the staff had sent the forms to Mr. Lisnik's business address and not to his home. On motion of Mr. Violette, seconded by Mr. Madore, the Commission voted to accept the staff recommendation calling for an assessment of \$100 against both Mr. Lisnik and Ms. Sargent. on motion of Mr. Madore, seconded by Mr. Tierney, the penalty of Mr. Stickney was waived on the basis of findings that Mr. Stickney had experienced a lengthy illness during the filing period. Mr. Smith's penalty was likewise waived, on findings showing that he did not lobby more than 8 hours in any one calendar month and that Common Cause's annual expenses amounted to only \$111.

Next on the agenda was the request of the staff for guidance as to whether a lobbyist who is replacing another lobbyist must register and submit an additional \$200 registration fee. Counsel Howard expressed the opinion that each such replacement must be treated as a new registration. There was no further discussion of this item.

The Commission then turned to the request of Mr. Peter Cleveland that he and RSVP Discount be exempted from filing a joint annual report on the basis that he and his partners were not compensated during 1994. Findings showed that Mr. Cleveland was subject to the registration and reporting requirements,

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having- been reimbursed for lobbying expenses. On those facts, Mr. Trafton moved to advise Mr. Cleveland that he must file the report. The motion was seconded by Mr. Madore and passed 4-0-2, Messrs. Webster and Devine abstaining.

Mr. Violette left the meeting at 11:50 a.m.

The Commission then reviewed yet another staff request for guidance, this as to whether the staff must bring forward any apparent violations of the gift law they may find in lobbyist disclosure reports. Mr. Trafton moved that the staff be directed to report all such findings to the Commission. Mr. Madore seconded the motion and it was so voted.

The members then agreed to meet on Monday, March 13 at 9:00 a.m. for the purpose of discussing the conclusions of the Subcommittee on the Commission's Jurisdiction.

Counsel Howard then reported that he had written to approximately 30 individuals who had failed to submit penalties; that several had since remitted the fees; but that two individuals had responded by insisting they were improperly fined. He said he had nothing to report on the Crook matter; that he has not spoken with the investigator assigned to the matter.

A motion was then made, seconded and voted to approve the new copy/FAX transmittal fee schedule as written.

The meeting was adjourned at 12:15 p.m.